

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARK PICOZZI,

Case No. 2:22-cv-01011-ART-EJY

Plaintiff,

ORDER

v.

STATE OF NEVADA, et al.,

Defendants.

Pro se Plaintiff Mark Picozzi (“Picozzi”), who is incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), has submitted a civil-rights complaint under 42 U.S.C. § 1983 and three motions for injunctive relief and a temporary restraining order. (ECF Nos. 5; 6; 8.) The Court denies his motions because they are not meritorious.

I. Relevant background

Picozzi’s First Amended Complaint (“FAC”) contains allegations related to failure to treat bleeding hemorrhoids and a back condition, failure of NDOC staff to process requests to the law library, mishandling of grievance forms, refusal to sell him a television, withholding of periodicals, opening of legal mail outside of his presence, and COVID-19 related lockdowns that prevented Picozzi from consulting with his habeas attorney and Catholic clergy. (ECF No. 10.)

After screening, this Court permitted various constitutional claims to proceed against Defendants. (ECF No. 9 at 21-22.) This Court allowed Picozzi’s First Amendment retaliation allegations against Defendants James Scally, Julie Williams, Jennifer Nash, and Ronald Oliver for allegedly losing grievances or documents attached to grievances to survive. This Court allowed Picozzi’s allegations of Eighth Amendment deliberate indifference to his hemorrhoid

1 condition survive against Defendants Dante Famy, Gregory Bryan, Gregory
2 Martin, George Pele-Taino, Marie Cervanes, Jaymie Cabrera, Rio Manalang,
3 Tonya Perry, Nick, Arrey, Hennequin, Francis Moka, Livingston, Torres, and J.
4 Barth. This Court allowed Picozzi's allegations of Eighth Amendment deliberate
5 indifference to his back condition survive against Defendants Famy, Bryan,
6 Martin, Pele-Taino, Cervanes, Cabrera, Manalang, Perry, and Nick. This Court
7 allowed Picozzi's allegations of Eighth Amendment deliberate indifference to
8 unsanitary conditions survive against Defendants Famy, Bryan, Martin, Pele-
9 Taino, Cervanes, Cabrera, Manalang, Perry, Nick, and Barth. This Court allowed
10 Picozzi's allegations that Defendants Dean Ontiveros and A. Alvarez violated his
11 Fourteenth Amendment due process rights during his disciplinary hearing to
12 survive. This Court also allowed Picozzi's allegations that Defendants Graham,
13 Mark, Nash, Danyele Sipes a.k.a. Danyele Madsen, William Kuloloia, Kristi
14 Roberson, Barth, Ontiveros, and Pele-Taino violated his Fourteenth Amendment
15 right to access the courts survive because requests to the law library for legal
16 research, permission to attend the law library and to file documents with the
17 Court were never processed and caused missed deadlines to survive.

18 Before the Court are two motions for preliminary injunctions (ECF Nos. 5;
19 6) and a motion for a temporary restraining Order (ECF No. 8). ECF Nos. 5 and 6
20 are identical. In ECF No. 5, Picozzi requests that the Court order injunctive relief
21 ordering he receive medical access to serious medical needs, surgery on bleeding
22 hemorrhoids, blood pressure checks, blood draws for diabetes, a blood count,
23 and for Defendants to stop retaliation by denying him an opportunity to purchase
24 a T.V. and fan. (ECF No. 5.) Picozzi's request for a restraining order asks that the
25 Court order that Defendants stop denying him back pain and cardiac medications
26 (presumably for blood pressure and to control his heartbeat) as well as
27 suppositories, schedule surgery, sell Picozzi a fan and allow Picozzi to receive the
28 fan as soon as possible, answer the emergency button, get Picozzi a "booster

1 shot”, and follow surgeons’ orders prior to surgery. (ECF No. 8.) Defendants have
2 opposed the motions (ECF Nos. 22; 23; 24.) Picozzi replied. (ECF No. 55.)

3 Relevant to the pending motions is Picozzi’s pleading regarding imminent
4 harm. (ECF No. 45.) Picozzi explains that he went to St. Dominican Hospital for
5 his hemorrhoid surgery, but it was not done due to cardiac issues. The provider
6 suggested a cardiac catheterization be performed. (*Id.*)

7 **II. Legal Standard**

8 Restraining orders and preliminary injunctions are “extraordinary
9 remed[ies] never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555
10 U.S. 7, 24 (2008). The legal standard for obtaining a temporary restraining order
11 and the legal standard for obtaining a preliminary injunction are “substantially
12 identical.” *See Stuhlbarg Intern. Sales Co. v. John D. Bush and Co.*, 240 F.3d 832,
13 839 n.7 (9th Cir. 2001), overruled on other grounds by *Winter*, 555 U.S. at 20.
14 The Supreme Court clarified the standard for these forms of equitable relief in
15 *Winter*, instructing that the plaintiff “must establish that [he] is likely to succeed
16 on the merits, that [he] is likely to suffer irreparable harm in the absence of
17 preliminary relief, that the balance of equities tips in [his] favor, and that an
18 injunction [or restraining order] is in the public interest.” 555 U.S. at 20. The
19 Ninth Circuit also recognizes an additional standard: “if a plaintiff can only show
20 that there are ‘serious questions going to the merits’—a lesser showing than
21 likelihood of success on the merits—then a preliminary injunction may still issue
22 if the ‘balance of hardships tips sharply in the plaintiff’s favor, and the other two
23 *Winter* factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d
24 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632
25 F.3d 1127, 1135 (9th Cir. 2011)).

26 A plaintiff who seeks a mandatory injunction—one that goes beyond simply
27 maintaining the status quo during litigation—bears a “doubly demanding”
28 burden: “[he] must establish that the law and facts clearly favor [his] position,

1 not simply that [he] is likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740
2 (9th Cir. 2015) (en banc). The Ninth Circuit has cautioned that mandatory
3 injunctions are “particularly disfavored” and “should not issue in doubtful cases.”
4 *Id.* (internal quotations omitted). The Prison Litigation Reform Act (“PLRA”)
5 similarly instructs that any restraining order or preliminary injunction granted
6 with respect to prison conditions “must be narrowly drawn, extend no further
7 than necessary to correct the harm the court finds requires preliminary relief,
8 and be the least intrusive means necessary to correct that harm.” 18 U.S.C. §
9 3626(a)(2).

10 Finally, “there must be a relationship between the injury claimed in the
11 motion for injunctive relief and the conduct asserted in the underlying
12 complaint.” *Pac. Radiation Oncology, LLC v. Queen’s Medical Ctr.*, 810 F.3d 631,
13 636 (9th Cir. 2015) (“Pacific Radiation”). “This requires a sufficient nexus between
14 the claims raised in a motion for injunctive relief and the claims in the underlying
15 complaint itself.” *Id.* The necessary connection is satisfied “where the preliminary
16 injunction would grant ‘relief of the same character as that which may be granted
17 finally.’” *Id.* (quoting *De Beers Consol. Mines*, 325 U.S. 212, 220 (1945)). “Absent
18 that relationship or nexus, the district court lacks authority to grant the relief
19 requested.” *Id.*

20 **III. Analysis**

21 The Court cannot grant injunctive relief with respect to Picozzi’s requests that
22 this Court order that Defendants address serious medical needs, follow surgeons’
23 orders, and stop retaliating against him because the Court does not have the
24 authority to generally order Defendants to follow the law. (See ECF Nos. 22; 23;
25 24.) Granting such general injunctive relief runs afoul of the PLRA’s instruction
26 that injunctive relief be narrowly tailored to the alleged harm. See 18 U.S.C. §
27 3626(a)(2).

28 The Court cannot order that Defendants provide Picozzi with hemorrhoid

1 surgery and tests related to the surgery because Picozzi's requests for those
2 procedures are moot and unsupported by the record. "A claim is moot when the
3 issues presented are no longer live or the parties lack a legally cognizable interest
4 in the outcome. The basic question is whether there exists a present controversy
5 as to which effective relief can be granted." *Outdoor Media Group, Inc. v. City of*
6 *Beaumont*, 506 F.3d 895, 900 (9th Cir. 2007) quoting *Village of Gambell v. Babbitt*,
7 999 F.2d 403, 406 (9th Cir. 1993). When injunctive relief is at issue, mootness is
8 determined based upon the present circumstances. *Mitchell v. Dupnik*, 75 F.3d
9 517, 528 (9th Cir. 1996). It appears that Picozzi was scheduled for hemorrhoid
10 surgery, but the surgery could not be performed because certain cardiac issues
11 needed to first be resolved. (See ECF No. 24; 45.) Picozzi's request for blood
12 pressure checks, blood draws for diabetes and blood counts appear to relate to
13 the underlying hemorrhoid surgery request and are thus likewise moot. It is also
14 not clear from the record that these exact tests have been prescribed and are
15 needed to get Picozzi ready for surgery. Thus, Picozzi's requests are unsupported
16 by the record. He has thus not demonstrated a likelihood of success, let alone
17 that the law and facts clearly favor his position.

18 Picozzi's requests that Defendants stop denying him medications for heart,
19 back, and hemorrhoid conditions are also unsupported by the record and too
20 vague and generalized for the Court to order relief. It appears Picozzi has been
21 prescribed and was given certain medications. It is not clear what other
22 medications are at issue, when they were prescribed, who prescribed them, and
23 what dosages were prescribed. Thus, Picozzi is unlikely to succeed on the merits
24 and has not demonstrated that the law and facts clearly favor his position. See
25 *Garcia*, 786 F.3d at 740.

26 With respect to Picozzi's request that staff respond to emergency call
27 buttons, there is no allegation that this alleged misconduct is ongoing, so Picozzi
28 has not carried his burden of demonstrating a real or immediate threat of

1 irreparable injury. *Cole v. Oroville Union High School Dist.*, 228 F.3d 1092, 1100
2 (9th Cir. 2000)(“In the context of injunctive relief, the Plaintiff must demonstrate
3 a real or immediate threat of an irreparable injury.”).

4 With respect to Picozzi’s request for injunctive relief pertaining to a COVID-
5 19 booster, televisions, and fans, these claims did not survive screening. (See
6 ECF No. 9.) Accordingly, this Court lacks the authority to grant Picozzi’s
7 requested relief. See *Pacific Radiation*, 810 F.3d at 636.¹

8 **I. Conclusion**

9 IT IS THEREFORE ORDERED THAT Plaintiff’s motions (ECF Nos. 5; 6; 8)
10 are DENIED.

11
12 DATED THIS 2nd day of February 2023.

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15 ANNE R. TRAUM
16 UNITED STATES DISTRICT JUDGE
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¹ The Court does not need to reach all of the arguments raised by Defendants to resolve the pending motions.